BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.
ATTORNEYS AT LAW
RALEIGH, NORTH CAROLINA

MAILING ADDRESS
POST OFFICE BOX 1800
RALEIGH, N.C. 27602

OFFICE ADDRESS
SUITE 1600
FIRST UNION CAPITOL CENTER
150 FAYETTEVILLE STREET MALL
RALEIGH, N.C. 27601

TELEPHONE 919-839-0300
FACSIMILE 919-839-0304

L.P. McLENDON, JR.
HUBERT HUMPHREY
EDGAR B. FISHER, JR.
W. ERWIN FULLER, JR.
JAMES T. WILLIAMS, JR.
WADE H. HARGROVE
M. DANIEL McGINN
MICHAEL D. MEEKER
WILLIAM G. McNAIRY
EDWARD C. WINSLOW III
HOWARD L. WILLIAMS
GEORGE W. HOUSE
WILLIAM P.H. CARY
REID L. PHILLIPS
ROBERT A. SINGER
JOHN H. SMALL
RANDALL A. UNDERWOOD
S. LEIGH RODENBOUGH IV
WILLIAM G. ROSS, JR.
MARK J. PRAK
JILL R. WILSON
MARC D. BISHOP
JIM W. PHILLIPS, JR.
MACK SPERLING
JEFFREY E. OLEYNIK
MARK DAVIDSON
JAMES R. SAINTSING
JOHN W. ORMAND III
ROBERT J. KING III
STEVEN J. LEVITAS
V. RANDALL TINSLEY
JOHN R. ARCHAMBAULT
S. KYLE WOOSLEY

DANIEL M. SROKA
FORREST W. CAMPBELL, JR.
MARCUS W. TRATHEN
JEAN C. BROOKS
ELLEN P. HAMRICK
JAMES C. ADAMS, II
ALLISON M. GRIMM
ELIZABETH S. BREWINGTON
H. ARTHUR BOLICK II
NATASHA RATH MARCUS
JOHN M. CROSS, JR.
JENNIFER K. VAN ZANT
KEARNS DAVIS
DAVID W. SAR
KATHLEEN M. THORNTON
BRIAN J. McMILLAN
JENNIFER L. BOLICK
DAVID KUSHNER
DEREK J. ALLEN
ELIZABETH V. LAFOLLETTE
GINGER S. SHIELDS
HAROLD H. CHEN
COE W. RAMSEY
NATALIE KAY SANDERS
ROBERT W. SAUNDERS
DAVID SHUB
JENNIFER T. HARROD
CHARLES E. COBLE
JOHN M. DeANGELIS
CLINTON R. PINYAN
KATHRYN V. PURDOM
ANDREW KIRK SUSONG

FOUNDED 1897

AUBREY L. BROOKS (1872-1958)
W.H. HOLDERNESS (1904-1965)
L.P. McLENDON (1890-1968)
KENNETH M. BRIM (1898-1974)
C.T. LEONARD, JR. (1929-1983)
CLAUDE C. PIERCE (1913-1988)
THORNTON H. BROOKS (1912-1988)
G. NEIL DANIELS (1911-1997)

GREENSBORO OFFICE
2000 RENAISSANCE PLAZA
230 NORTH ELM STREET
GREENSBORO, N.C. 27401

WASHINGTON OFFICE
901 PENNSYLVANIA AVENUE, N.W.
SUITE 900, SOUTH BUILDING
WASHINGTON, D.C. 20004

DOCKET FILE COPY ORIGINAL

February 9, 2000

RECEIVED
FEB 10 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th St., S.W., TWB204
Washington, D.C. 20004

Re: Comments of Lockwood Broadcasting, Inc.;
MM Docket No. 00-10

Dear Ms. Salas:

Transmitted herewith, on behalf of Lockwood Broadcasting, Inc., are an original and four copies of Comments in response to the *Order and Notice of Proposed Rule Making* In the Matter of Establishment of a Class A Television Service, released January 13, 2000, issued in MM Docket No. 00-10.

If any questions should arise during the course of your consideration of these comments, it is respectfully requested that you communicate with this office.

Very truly yours,

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

Coe W. Ramsey

Mark J. Prak
Coe W. Ramsey
Counsel to Lockwood Broadcasting, Inc.

OHH

MJP:sh
Enclosures

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Establishment of Class A	)	MM Docket No. 00-10
Television Service	)	
	)	
	)	

COMMENTS OF LOCKWOOD BROADCASTING, INC.

Mark J. Prak
Coe W. Ramsey

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
First Union Capitol Center
Suite 1600 (27601)
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304

Counsel to Lockwood Broadcasting, Inc.

February 10, 2000

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Establishment of Class A	)	MM Docket No. 00-10
Television Service	)	
	)	
	)	

To: The Commission

COMMENTS OF
LOCKWOOD BROADCASTING, INC.

Lockwood Broadcasting, Inc. ("Lockwood"), licensee of Low-Power Television Stations WPEN-LP, Channel 53, Hampton, Virginia; W47CE, Channel 47, Hampton, Virginia; and W51BH, Channel 51, Gloucester, Virginia; (the "stations"), by its counsel, hereby files its Comments in response to the *Order and Notice of Proposed Rule Making* in the instant proceeding, MM Docket No. 00-10, Released January 13, 2000 (the "*NPRM*").

Lockwood applauds the FCC's proposals in the *NPRM* and believes that, in general, the proposals, if adopted, would faithfully implement and complement the Community Broadcasters Protection Act of 1999 (the "CBPA" or "Act"), 47 U.S.C. § 336 (f). Lockwood's comments are limited to four particular issues. Specifically, Lockwood believes that the Commission should (1) allow LPTV stations that certify to broadcast the statutory number of hours and type of

programming to qualify for Class A licenses; (2) permit all Class A licensees to apply for a paired DTV station; (3) grant Class A licensees signal carriage rights; and (4) preserve the service contours of LPTV stations operating outside of the core spectrum from the date they find and apply for an acceptable core channel.

I. LPTV LICENSEES THAT CERTIFY TO BROADCAST THE NUMBER OF HOURS AND TYPE OF PROGRAMMING SET FORTH IN THE STATUTORY CRITERIA SHOULD QUALIFY FOR CLASS A LICENSES

The CBPA provides that a low-power television ("LPTV") station qualifies for a Class A license if during the ninety days preceding the date of enactment of the Act (1) the station broadcast a minimum of eighteen hours per day; (2) the station broadcast an average of at least three hours of programming that was produced within the market area served by the station; and (3) the station was in compliance with the FCC's low-power television requirements and, after the date of its Class A license application, the station is in compliance with the FCC's operating rules for full-power television stations. *See id.* § 336(f)(2)(A). Also, the CBPA gives the FCC the discretion to qualify LPTV stations, notwithstanding the statutory criteria, if "the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission." *Id.* § 336(f)(2)(A).

As recognized by Congress in the Act's findings and by the FCC in the *NPRM*, LPTV license limitations have severely hampered low-power television licensees. *See* CBPA of 1999, Pub. L. No. 106-113, 113 Stat. 1501 (1999); *NPRM* ¶ 5. The secondary status of LPTV stations affects the

ability of LPTV stations to raise capital. Also, with the conversion of full power television stations from NTSC to 8-VSB digital transmission, the future of LPTV stations is uncertain.

It is for these very reasons that some LPTV stations simply do not satisfy at least one of the first two criterion of the three-part statutory criteria for Class A license qualification. That is, LPTV license limitations have, in effect, prevented some LPTV stations from broadcasting 18 hours per day or three hours of locally produced programming. In some cases, LPTV stations did, at one time, operate within the parameters of the three-part statutory criteria; however, such operation was outside of the criteria's 90 day window and was curtailed due to LPTV license limitations. For example, Lockwood's stations were in full compliance with the three-part statutory criteria until November 1, 1998, when, given LPTV license limitations, particularly the uncertainty of LPTV licenses and the lack of must-carry rights, it became economically impractical for Lockwood's stations to continue to air at least three hours of locally produced programming.

It would be simply unfair and contrary to the objectives of the CBPA to deny Class A licenses to LPTV licensees who have been in compliance with the FCC's LPTV requirements and have demonstrated a desire to operate in a manner commensurate with full-power operations but who have been unable to do so because of LPTV license limitations. Accordingly, the public interest, convenience, and necessity would be served by treating such LPTV licensees as qualifying for Class A licenses. That is, the Commission should permit a LPTV station that has been in compliance with the FCC's LPTV rules to qualify for a Class A license, irrespective of the other statutory criteria, so long as the licensee certifies and accepts as a condition to the Class A license that the station will operate at least 18 hours a day and provide at least 3 hours of programming per week that is produced within the station's market area (or the market area served by a commonly controlled

station group). Such a decision by the FCC would be consistent with and advance the objectives of the CBPA.

II. THE FCC SHOULD PERMIT ALL CLASS A LPTV STATIONS TO APPLY FOR A PAIRED DTV STATION

Although the FCC is *"not required"* to issue an additional license for DTV operations to Class A licensees and TV translators, the CBPA provides that the FCC "*shall accept* a license application" for Class A or TV translator DTV facilities that would not cause interference to other broadcast facilities. *See* 47 U.S.C. § 336(f)(4) (emphasis added). The *NPRM* asks for comment on whether this statutory language requires the Commission to authorize a paired channel for DTV operation if a Class A or TV translator station licensee identifies and applies for an acceptable channel. *See NPRM* ¶ 23. The statutory language is clear—the FCC "shall accept a license application for such services proposing facilities that will not cause interference to the service area of any other broadcast facility." *See* 47 U.S.C. § 336(f)(4).

Obviously, the plain language of the statute requires the FCC to accept DTV license applications from all Class A or TV translator stations—irrespective of when they were licenced or received an initial construction permit. While this might create an apparent inequity with respect to full service licensees that do not have a paired DTV channel because they received their initial station construction permit after the April 3, 1997 date used to define eligibility for the initial paired DTV licenses, *this is what the statute mandates*. Had Congress intended otherwise, it would have explicitly limited the eligibility for Class A DTV licenses as it did with respect to full power stations. *See* 47 U.S.C. § 336(a)(1) (explicitly limiting the initial eligibility for [DTV] licenses to persons that,

of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct a station). Allowing *all* LPTV Class A and TV translator stations the option to hold a paired channel for DTV, if the licensee can find an acceptable channel, is consistent with and advances the objectives of the CBPA by helping to remove some of the uncertainties facing certain low-power stations caused by LPTV license limitations and the DTV transition.

III. CLASS A STATIONS SHOULD BE ENTITLED TO SIGNAL CARRIAGE RIGHTS

The CBPA provides that, in general, Class A LPTV licensees will be subject to the same license terms and renewal standards as those for full-power television stations. *See* 47 U.S.C. § 336(f)(1). The *NPRM* states that the Commission intends to apply to Class A applicants and licensees all Part 73 rules, except for those which are inconsistent with the manner in which LPTV stations are authorized or the lower power at which these stations operate. *See NPRM* ¶ 20.

In addition to the Part 73 rules, the rules concerning carriage of televison broadcast signals in Part 76 of the FCC's rules should also apply to Class A LPTV stations. The CBPA does not restrict the license terms for Class A stations to Part 73; rather, the Act requires that Class A stations enjoy the *"same"* license terms as those for full-power stations. *See* 47 U.S.C. § 336(f)(1). Full power stations, by the terms of their licenses, enjoy signal carriage rights vis-a-vis cable systems pursuant to Part 76. Accordingly, pursuant to the CBPA's statutory mandate, Class A LPTV licensees should also be entitled to Part 76's signal carriage rights. Lockwood agrees with the proposal in the *NPRM* concerning locally produced programming to define a Class A station's "market area" as the station's protected service area. *See NPRM* ¶ 19. This definition should also

be used in defining a Class A LPTV station's "television market" for purposes of Part 76 signal carriage rights.

IV. THE SERVICE AREA OF LPTV STATIONS OPERATING OUTSIDE OF THE CORE SPECTRUM SHOULD BE PRESERVED FROM THE DATE THE STATION FILES AN ACCEPTABLE APPLICATION FOR A CORE CHANNEL

Although the CBPA provides that the FCC may not grant a Class A license to LPTV stations operating on channels 52 through 69, the Act does require the Commission to provide such stations the opportunity to qualify for Class A status and to issue a Class A license to such a station if the station is ultimately assigned a channel within the core spectrum (channels 2 through 51). *See* 47 U.S.C. § 336(f)(6)(A). Moreover, the Act requires the FCC to "preserve the service areas of low-power television licensees pending the final resolution of a class A application." *See* 47 U.S.C. § 336(f)(1)(D). In the *NPRM*, the Commission proposes to preserve the service area of LPTV licensees from the date the FCC receives an acceptable certification of eligibility for Class A status. *See NPRM* ¶ 12. However, with respect to LPTV licensees operating on channels outside of the core spectrum, the *NPRM* proposes to provide protection to such stations only when the station is assigned a channel within the core spectrum and when the Commission issues a Class A license. *See NPRM* ¶ 24. This later proposal is inconsistent with the congressional directive of the Act—the contour of such stations should be protected from the date a qualified licensee *applies* for a core channel for purposes of obtaining Class A status.

The CBPA, in plain language, provides that a LPTV station's service area should be preserved "pending the final resolution of a class A application." *See* 47 U.S.C. § 336(f)(1)(D).

Thus, as soon as a LPTV licensee seeks Class A status for a particular channel, the statutory mandate requires the FCC to preserve the station's service contour. It does not matter whether the applicant is outside of the core channels—the Act explicitly provides a way for such stations to obtain Class A status. Such stations can qualify for a Class A license and then seek a core channel to operate on. The time "pending the final resolution of a class A application" for qualifying stations on channels 52 though 69 begins as soon as they apply for a core channel. Accordingly, it is from this time that the contours of such stations should be protected. Of course, the protected contour should be that of the core channel applied for.

In the *NPRM*, the FCC notes that to provide interference protection before a station is assigned an in-core channel appears inconsistent with the Act's prohibition on awarding Class A status to stations outside of the core channels. *See NPRM* ¶ 24. However, the timing of interference protection is *not* an award of Class A status. Rather, it is a date that interference protection relates back to upon grant of Class A status. Again, the statute is clear—interference protection begins "pending the final resolution of a class A application." *See* 47 U.S.C. § 336(f)(1)(D). Thus, providing interference protection starting from the date a qualified LPTV station seeks a core channel is, indeed, consistent with the CBPA—it is not a grant of a Class A license.

In fact, for LPTV stations that do not anticipate DTV displacement or that have already filed a displacement application, the only reason such stations would seek to relocate their analog station to a core channel would be to obtain a Class A license. Thus, an application for a new channel assignment is, in effect, part of a LPTV station's Class A application. Not to provide protection from the date of an application for a new channel assignment would not only be contrary to the Act, but it would be inequitable to such stations.

CONCLUSION

Again, Lockwood Broadcasting generally applauds the Commission's proposals in the *NPRM* and is excited about the new Class A license. Nonetheless, as discussed above, Lockwood believes that the Commission should (1) allow LPTV stations that certify to broadcast the statutory number of hours and type of programming to qualify for Class A licenses; (2) permit all Class A licensees to apply for a paired DTV station; (3) grant Class A licensees signal carriage rights; and (4) preserve the service contours of LPTV stations operating outside of the core spectrum from the date they find and apply for an acceptable core channel.

Respectfully submitted,

LOCKWOOD BROADCASTING, INC.

By _____
Mark J. Prak

By _____
Coe W. Ramsey

Their Counsel

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
First Union Capitol Center
Suite 1600 (27601)
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304

February 10, 2000